

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR**

**Service Appeal No. 7913/2021**

**BEFORE:** RASHIDA BANO --- MEMBER (J)  
MUHAMMAD AKBAR KHAN --- MEMBER (E)

Dr. Munir Ahmad S/o Abdullah Jan, R/o Patwar Bala, Warsak Road  
Peshawar.....(*Appellant*)

**VERSUS**

1. Director Elementary and Secondary Education, Directorate of Elementary and Secondary Education, Khyber Pakhtunkhwa, Peshawar.
2. District Education Officer (Male), Peshawar.
3. Head Master, Government Middle School, Lakarai Kaniza, Peshawar.
4. Regional Director, Higher Education Commission, Peshawar.....(*Respondents*)

**Present:-**

HABIB ANWARA,  
Advocate --- For Appellant

MUHAMMAD JAN,  
District Attorney --- For respondents.

Date of Institution.....22.12.2021  
Date of Hearing..... 13.12.2023  
Date of Decision..... 13.12.2023

**JUDGMENT.**

**MUHAMMAD AKBAR KHAN, MEMBER(E):-** Brief facts of the case are that the appellant initially appointed as Arabic Teacher and was posted at Government Middle School, Lakarai Kaniza, Peshawar. The appellant acquired Ph.d Degree in the year 2017 and continued his duty till 14.06.2019; that the appellant applied for the post of Assistant Professor (on project basis for one year) and joined the duty as Assistant Professor. He submitted application for resignation from the post of Arabic Teacher on 29.04.2019. It was pointed out by the respondent (Higher Education

Commission) that since phase 1 of the project has been completed, the candidates can only apply when the next phase of the said project commence. The appellant submitted application through proper channel for withdrawal of his resignation on 24.05.2019 which was forwarded by the respondent No. 3 to respondent No. 2 which was not responded. The appellant submitted another application on 13.06.2019 to respondent No. 3 which was forwarded by respondent No. 3 to respondent No. 2 on which respondent No. 2 informed vide letter dated 03.07.2019 that resignation of the appellant dated 29.04.2019 has been accepted w.e.f 03.06.2019 vide order dated 31.05.2019. The appellant filed departmental appeal for reconsideration on 18.10.2021 to respondent No. 1 which was rejected vide letter dated 22.11.2021, hence preferred the instant service appeal on 22.12.2021.

02. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant and learned District Attorney and have gone through the record with their valuable assistance.

03. Learned counsel for the appellant contended that the respondents have not followed the due course while passing the impugned order dated 31.05.2019 by ignoring the withdrawal requests of the appellant which is unlawful and without lawful authority; that the impugned orders are against the law, facts, norms of natural justice, hence not tenable and liable to be set aside; that the appellant remained punctual towards his duties and never been complained against, therefore, the treatment so inflicted upon the

appellant is harsh; that the appellant remained active till 14<sup>th</sup> of June and duly conveyed his letter through respondent No. 3 to respondent No. 2 which shows that respondent No. 2 has not responded to his withdrawal request till 14<sup>th</sup> June, 2019; that the commission had introduced a project for hiring Ph.d Scholars for a period of one year as Assistant Professor with requirement of resignation from previous service; that the resignation was accepted by the respondent No. 2 in absence of the appellant; that the appellant has unblemished service record with advance degrees up to Ph.d, therefore, the respondents has ignored this fact while passing the impugned orders; that the impugned order speaks volume about malafide towards the appellant, therefore, the impugned order is liable to be set aside. Learned counsel for the appellant relied on 1999 SCMR 880, 2007 SCMR 73, 2007 SCMR 792 & 2007 PLC (C.S.) 718.

04. On the other hand, learned District Attorney contended that the appellant himself submitted resignation from his service; that the impugned order dated 31.05.2019 is according to law and rules; that the respondents are bound to act upon the exciting law and rules.

05. Perusal of record reveals that the appellant entered into government service as Arabic Teacher on 06.06.2014. He pursued his academic career and acquired Ph.d degree in 2017. The appellant applied for a project post of Assistant Professor offered by the Higher Education Commission for a period of one year. Since it was a condition for a candidate to resign from any other post, therefore, the appellant submitted his resignation from the post of Arabic Teacher to the competent authority (respondent No. 2) through proper channel on 29.04.2019. However, the appellant could not

join the project post of Assistant Professor in the Higher Education Commission as the first phase of the project had been completed and he was advised to apply for the next phase of the project, therefore, the appellant submitted another application for withdrawal of his resignation on 24.05.2019 through proper channel. Record further reveal that the withdrawal application was forwarded to the competent authority (respondent No. 2) on the same date i.e. 24.05.2019. However, the respondent No. 2 accepted resignation of the appellant vide order dated 31.05.2019 with the note "this order is final and will not be revoked at any stage at any time". This note added by the respondent No. 2 in his order dated 31.05.2019 speaks that the application for withdrawal of resignation by the appellant had reached in his office and it was well in his knowledge. There is no dispute that the resignation tendered by the appellant on 29.04.2019 specifying therein to give effect of his resignation from 03.06.2019 was later on withdrawn by him on 24.05.2019 while the resignation was accepted on 31.05.2019. It is a settled law that a civil servant can withdraw or recall his resignation before its acceptance by the competent authority as long as he continue his service and his service is not terminated by way of accepting his resignation by the competent authority. Reliance is placed on 2007 SCMR 792. We hold that since the appellant had submitted application for withdrawal of his resignation on 24.05.2019 much before its acceptance on 31.05.2019, therefore, the competent authority was required to allow the appellant to withdrawal his resignation instead of accepting it.

06. In view of above discussion we set aside the impugned orders dated 31.05.2019 and 22.11.2021 and reinstate the appellant in service. The period, the appellant remained out of service till the judgment of the instant service appeal shall be treated as leave without pay. Costs shall follow the event. Consign.

07. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 13<sup>th</sup> day of December, 2023.*



(Rashida Bano)  
Member (J)



(Muhammad Akbar Khan)  
Member (E)

ORDER


13.12.2023 01. Learned counsel for the appellant present. Mr. Muhammad Jan,

District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment of today separately placed on file, consisting of (05) pages, we set aside the impugned orders dated 31.05.2019 and 22.11.2021 and reinstate the appellant in service. The period, the appellant remained out of service till the judgment of the instant service appeal shall be treated as leave without pay. Costs shall follow the event. Consign.

03. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 13<sup>th</sup> day of December, 2023.*

  
(Rashida Bano)  
Member (J)

  
(Muhammad Akbar Khan)  
Member (E)